



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023



SEMS DocID 626279

**URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

October 21, 2004

FDS Industries, LLC  
c/o Michael A. Voccola  
The Procaccianti Group  
1140 Reservoir Avenue  
Cranston, RI 02920

Re: **NOTICE OF POTENTIAL LIABILITY AND INVITATION TO PERFORM OR  
FINANCE PROPOSED CLEANUP ACTIVITIES:  
Lonsdale Bleachery Site, Lincoln, Rhode Island**

Dear Mr. Voccola:

This letter serves to notify FDS Industries, LLC ("FDS") of potential liability regarding the Lonsdale Bleachery Site, Lincoln, Rhode Island ("Site"), as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a). This letter also notifies FDS of forthcoming removal activities at the Site which FDS is invited to perform or finance and which FDS may be ordered to perform at a later date.

**NOTICE OF POTENTIAL LIABILITY**

The United States Environmental Protection Agency ("EPA") has documented the release or threatened release of hazardous substances or pollutants or contaminants at the Site, which is located off of Carrington Street in Lincoln, Rhode Island. The property is further defined as Lot 60 on the Town of Lincoln Tax Map Plat Number 5, and at the Town of Lincoln Registry of Deeds in Book 249, Page 27. The property is bounded by the Blackstone River and Town of Lincoln property to the north, the Blackstone River and industrial property to the east, and other industrial properties to the south and west.

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Hazardous substances involved in the release or threat of release at the Site include, but are not limited to, asbestos. EPA has spent or is considering spending public funds on actions to investigate and control such releases or threatened releases at the Site. Unless a potentially responsible party ("PRP") or parties commit to properly performing or financing such actions, EPA may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and other laws, liable parties may be obligated to implement response actions deemed necessary by EPA to protect public health, welfare, or the environment and may be liable for all costs incurred by the Government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities.

Responsible parties under CERCLA include current and former owners and operators of the Site, persons who arranged for disposal or treatment of hazardous substances found at the Site (often called "generators"), and persons who accepted hazardous substances for transport to the Site (often called "transporters").

EPA has evaluated evidence gathered during investigations of the Site. Based on this evidence, EPA has information indicating that FDS is a potentially responsible party under Section 107(a) of CERCLA with respect to the Site. Specifically, EPA has reason to believe that FDS is an owner/operator of the Site. By this letter, EPA notifies FDS of its potential liability and urges FDS to voluntarily perform or finance those response activities that EPA determines are necessary at the Site.

### **OUTLINE OF SITE RESPONSE ACTIVITIES**

In accordance with CERCLA and other authorities, EPA has undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions have included conducting site assessments as well as other investigations which have revealed the presence of hazardous substances at the Site.

Due to the presence of hazardous substances at the Site, and in light of other conditions, EPA has determined that there may be an imminent and substantial endangerment to public health, welfare, or the environment. In response, EPA is planning to conduct the following immediate removal activities at the Site: removal/abatement of asbestos-containing material (ACM) from the former boiler area and off-site disposal of ACM at EPA-approved disposal facilities.

## **INVITATION TO PERFORM SITE RESPONSE ACTIVITIES**

Before EPA spends additional public funds to undertake a removal action at the Site, EPA urges FDS to voluntarily perform or finance the removal activities outlined above. Any such work performed by FDS in its capacity as a PRP must be conducted pursuant to an administrative order and an EPA-approved workplan as authorized by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Prior to final issuance of such an order, a draft order will be sent to FDS or its representative for review and comment. Enclosed herewith is a copy of a summary of a generic Scope of Work. This document should provide FDS with an understanding of the types of plans and activities typically required by such an order.

Be advised that even if FDS does not indicate a willingness to perform or finance necessary response actions, EPA may order FDS to undertake such actions under Section 106 of CERCLA, 42 U.S.C. § 9606. Failure to comply with a Section 106(a) administrative order may result in a fine of up to \$27,500 per day under Section 106(b) or imposition of treble damages under Section 107(c)(3) of CERCLA. Further, FDS may be held liable under Section 107(a) for the cost of the response activities EPA performs at the Site and for any damages to natural resources. In addition, by virtue of Section 113 of CERCLA, 42 U.S.C. § 9613, other PRPs who agree to perform the necessary response action may seek contribution protection.

## **PRP RESPONSE AND EPA CONTACT**

FDS should contact EPA within **ten (10) business days** after receipt of this letter to indicate its willingness to perform or finance the response activities outlined above. If EPA does not receive a response within that time, EPA will assume that FDS does not wish to negotiate a resolution of its liabilities in connection with the response and that FDS has declined any involvement in performing response activities. Be advised, however, that liability under CERCLA is joint and several; therefore, each PRP is potentially liable for undertaking all response actions or reimbursing the Government for the entire amount of its response costs.

Please provide the name, address, and telephone number of a designated contact for future communications. Your written response, including any technical comments or questions concerning the proposed response activities, should be directed to the EPA On-Scene Coordinator (OSC) for the Site:

Frank Gardner  
U.S. Environmental Protection Agency  
Emergency Response and Removal Section II  
1 Congress Street Suite 1100, Mail Code HBR  
(617) 918-1278

Legal questions and all communications from counsel should be directed to:

Cynthia A. Lewis, Enforcement Counsel  
U.S. Environmental Protection Agency  
Office of Environmental Stewardship  
1 Congress Street Suite 1100, Mail Code SES  
Boston, Massachusetts 02203  
(617) 918-1889

### **DECISION NOT TO USE SPECIAL NOTICE**

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and PRPs to conduct or finance response activities. The use of special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

Due to the exigencies posed by conditions present at the Site, removal activities must be conducted as expeditiously as possible. EPA has therefore decided not to invoke the Section 122(e) special notice procedures with respect to CERCLA removal actions at this Site. Nonetheless, EPA is willing to discuss settlement opportunities without invoking a moratorium, but will initiate the response action as planned if such discussions do not lead to settlement expeditiously.

### **ADMINISTRATIVE RECORD**

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA will establish an administrative record containing documents that form the basis of EPA's decision on the selection of response actions for the Site. The administrative record files may be inspected and comments may be submitted by contacting the OSC for the Site. The Administrative Record Files with corresponding index should be available for inspection at a repository near the Site within sixty (60) days of initiation of on-site removal activities.

### **SITE ACTIVITY OUTSIDE EPA ACTIONS**

If you are already involved in discussions with state or other local authorities or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities. However, you are advised to report the status of any such discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

## CONSENT TO ACCESS

EPA requests access to the FDS property, to perform or oversee the response actions discussed above. This request is enclosed.

## PURPOSE AND USE OF THIS NOTICE LETTER

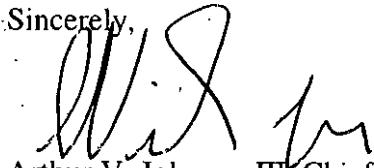
The factual and legal discussions contained in this letter are intended solely to provide notice and information. Such discussions are not intended to be, and cannot be, relied upon as EPA's final position on any matter set forth herein.

Due to the seriousness of the environmental and legal problems posed by conditions at the Site, EPA urges that FDS give immediate attention and provide a prompt response to this letter.

By copy of this letter EPA is notifying the State of Rhode Island and the Natural Resources Trustees of EPA's intent to perform, or to enter into negotiations for the performance or financing of, response actions at the Site.

Thank you for your attention to this matter.

Sincerely,



Arthur V. Johnson III, Chief  
Emergency Planning and Response Branch

Enclosures

cc: Frank Gardner, EPA On-Scene Coordinator - OSRR  
Sharon Fennelly, EPA Enforcement Coordinator - OSRR  
Holly Inglis, EPA Administrative Records Coordinator - OSRR  
Cynthia A. Lewis, EPA Enforcement Counsel - OES  
Cheryl O'Halloran, EPA CERCLIS Coordinator - OSRR  
Don Squires, Rhode Island Department of Environmental Management  
Andrew Raddant, Acting Environmental Officer, U.S. Department of the Interior  
Ken Finkelstein, National Oceanic and Atmospheric Administration

## SUMMARY OF GENERIC SCOPE OF WORK

This summary of the Generic Scope of Work is provided for informational purposes only. More detailed provisions will be set forth in the site-specific Scope of Work. Provisions may vary from site to site.

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When EPA determines that a Potentially Responsible Party (PRP) has the ability to promptly and properly prevent, mitigate, or eliminate the threats posed by hazardous substances at the Site, EPA may issue an Administrative Order (Order) to such party (the Respondent) with an attached Scope of Work (SOW). The Order and SOW, among other things, compel the Respondent to develop a plan to clean the Site. The components of the plan (also called a "deliverable") must be submitted to EPA for approval before implementation. Detailed instructions for generating each component shall be provided in the SOW. The plan shall consist of the components listed below.

- 1) **Site Security** - The Respondent shall provide on-site security service. Site security shall be maintained until EPA determines the threats posed by conditions at the Site are eliminated or substantially mitigated.
- 2) **Notification of Contractor Selection** - The Respondent shall notify EPA of the proposed cleanup contractor selected to perform work required under the Order.
- 3) **Site-Specific Health and Safety Plan (HASP)** - The Respondent shall develop and implement a HASP for all activities to be conducted at the Site. The HASP shall be developed to protect all on-site personnel and must comply with all applicable health and safety regulations.
- 4) **Quality Assurance Plan (QAP)** - The Respondent shall develop a QAP to be utilized in conducting all field and laboratory analysis. The QAP shall ensure that analytical results generated are of known quality.
- 5) **Site Assessment Plan (SAP)** - The Respondent shall develop a SAP specifying the overall strategy of the field investigative work necessary to characterize site contamination.
- 6) **Site Assessment** - A Site Assessment shall be conducted following EPA approval of the SAP.
- 7) **Site Assessment Report and Cleanup Plan (SAR/CP)** - Following completion of the Site Assessment, the Respondent shall develop a SAR/CP that summarizes the Site Assessment and proposes cleanup methods necessary to substantially mitigate and/or eliminate the threats posed by hazardous substances present at the Site.
- 8) **Site Cleanup** - The Site Cleanup shall be conducted according to the EPA approved Cleanup Plan.
- 9) **Completion of Work Report (CWR)** - Upon completion of the Site Cleanup, the Respondent shall submit a CWR summarizing the work performed under the Order and SOW and outlining any remaining contamination.

At any time prior to or after the completion of the work specified in this SOW, EPA may determine that additional tasks are necessary in order to achieve the objectives of the Order, the SOW and CERCLA.